

MINUTES

**MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on April 16, 1999
at 8:04 A.M., in Room 325 Capitol.

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Duane Grimes (R)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)

Members Excused: Sen. Walter McNutt (R)

Members Absent: None.

Staff Present: Delila Croucher, Committee Secretary
Valencia Lane, Legislative Branch

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HJR 37, HJR 38
Executive Action: HJR 37, HJR 38

HEARING ON HJR 38

Sponsor: REP. BEVERLY BARNHART, HD 38, BOZEMAN

Proponents: Sandy Oitzinger, MT Juvenile Probation Office

Opponents: None

Opening Statement by Sponsor:

REP. BEVERLY BARNHART, HD 38, BOZEMAN, opened on her resolution. This resolution will allow a group of people to get together in order to solve the problem with the salaries of the juvenile probation officers. As of now, the juvenile probation officers serve at the pleasure of the court. Salaries are set by judges, but the County Commissioners set their budget. Across the state, there is an inconsistency with the juvenile probation officers wages. This resolution will fit into Senate Bill 11 as well. It will not take a great deal of time. A Subcommittee could work along with the other agencies listed in the bill to resolve this problem and then bring it to the next legislature.

{Tape : 1; Side : A; Approx. Time Counter : 0 - 2.4}

Proponents' Testimony:

Sandy Oitzinger, MT Juvenile Probation Office, rose in support of the bill. This bill is similar to the court reporters salary issue that the Committee heard earlier in the year. The greatest difficulty is that the legislative salary caps do not move with inflation and that creates a lot of clustering in the work force. This problem has been with us since 1974 and has resulted in pay cuts for individuals and lawsuits. This study will allow the situation to be resolved.

{Tape : 1; Side : A; Approx. Time Counter : 2.4 - 3.7}

Opponents' Testimony: None

Questions from Committee Members and Responses:

SEN. GRIMES asked **Ms. Oitzinger** if it is her opinion that the salaries of these individuals ought to be consistent state wide.

Ms. Oitzinger said that was one option to begin with. The next option that was looked at was classification so that there would not be the uniformity. There certainly is logic in having salaries even across the state. However, a classification system is something that can also be considered.

{Tape : 1; Side : A; Approx. Time Counter : 3.7 - 5.2}

SEN. GRIMES commented that there are competing elements within the state so it may not be the best pay policy to establish an equalization of salaries across the board.

{Tape : 1; Side : A; Approx. Time Counter : 5.2 - 5.6}

Closing by Sponsor:

REP. BARNHART closed on her bill.

{Tape : 1; Side : A; Approx. Time Counter : 5.6 - 6.1}

HEARING ON HJR 37

Sponsor: REP. JOAN HURDLE, HD 13, CENTRAL BILLINGS

Proponents: Sharon Hoff, Montana Catholic Conference
 Betty Waddell, Montana Association of Churches
 Paul Whiting, Citizen

Opponents: None

Opening Statement by Sponsor:

REP. JOAN HURDLE, HD 13, CENTRAL BILLINGS, opened on her resolution. This resolution asks that the legislature take a look at the overall issue of the growing number of women in prison. The women's prison population is growing much faster than the mens population, both nationally and statewide. The rapid increase in the population is a frustration to state legislatures throughout the nation because it is so expensive. No matter how many prisons are built, more are always needed. A study, such as this one, would yield information beyond just the one prison in Billings. The women's prison in Billings is of a manageable size to study. Yet the policies and systems of that small prison are typical of the whole system.

At the present time, most women under the supervision of the Department of Corrections are currently on probation, parole, or community supervision. Fewer are in prison, but it is that prison population itself that is growing so rapidly. We are talking about the women in prison in this bill. It is a small prison, typical of the system, and perfect for a study.

The study would hopefully answer the following questions. What is causing the extraordinary growth? Why is there so much recidivism? How much drug use, both legal and illegal, is there? Are paroles timely and appropriate? How many inmates are incarcerated for non-violent crimes? Are more training and education programs needed? How does out-of-state placement affect mothers and children and other relationships.

The Department of Corrections total General Fund increase over the 1998 base operating budget is presently almost \$30 million, not counting the \$20 million increase for construction. Yet the Department of Corrections was reported as saying that they would have a tough time maintaining security and public safety unless they receive another \$2 million.

The growth in prison populations does not correlate with anything except time. It does not correlate with the crime rate, the

overall population growth, or even with the amount spent. Nationally, arrests of women are up 31.4% in the last three years and the women's prison population is up 139%, while in Montana, it is closer to a 200% increase.

The main goal of prisons is to protect the public from criminals. In general, women have less tendency toward violence, escape, riot and very much need to be with their children. It is possible that a better treatment for women would be intensive supervision, home arrest, daily reporting, home officer visits and outpatient treatment.

Women are increasingly victims of the war on drugs. Most need treatment and do not require incarceration to protect the public from them. Women currently convicted of drug offences are often only couriers that have been exploited and coerced into the drug trade, or trapped again by a system focused on men. Seventy-eight percent of the women in prison have been physically or sexually abused. Fifty percent of those women were abused by someone they knew. Fifty-six percent reported that the abuse included rape. Women are subjected to the same policy of strip searching and isolation as are men. The women's prison has the same classification and the same disciplinary practices as the men's prison.

The American Correctional Association's standards for accreditation to which Montana aspires, does not differentiate between men and women in the recommended standards. In every office of every prison in Montana, there are notebooks full of ACA recommendations. However, even ACA is beginning to understand that women need different programming and different standards and different treatments.

Seventy percent of the women in prison are mothers. Prior to incarceration, nearly all of these women were single mothers who struggled with very low incomes, lack of education, and problems with employment. The crimes for which most are in prison for are non-violent property crimes and drug related offences. Mothers in prison can easily lose their children as the child is shifted from family to family. Women are completely dependent on prison officials who are often indifferent to the special needs of mothers. Children of prisoners can experience anger, alienation, hostility to authority, feeling of abandonment, and overall dysfunction.

Supportive personal relationships are the key to rehabilitation for all people in prison. This study will allow for good, solid information to be put together for the basis of legislative policy decisions in the next session. **EXHIBIT(jus83a01)**

{Tape : 1; Side : A; Approx. Time Counter : 6.1 - 17.8}

Proponents' Testimony:

Sharon Hoff, Montana Catholic Conference, rose in support of the bill. The Conference has been involved with women's prison issues for a number of years and would like to see this study take place. There is not a resident pastor in the women's prison, there is not a state paid pastor like there is at men's prisons. The chapel is voluntary for the most part. When women have the spiritual development and support, the recidivism rate decreased dramatically. There is also a lot of concern with the abuse issues.

It is important that these women receive the type of correction that they need for committing crimes. It is important that society is safe. But it is also important that we are building a society that regards and respects the human dignity of all people. We also need to look at what is in place for women when they come out of prison. The issue of mothers in prison is also very important. The question is whether we want to be a society with more prisons and hard cells or do we want a society that supports and sustains life.

{Tape : 1; Side : A; Approx. Time Counter : 17.8 - 21.9}

Betty Waddell, Montana Association of Churches, rose in support of the resolution. The Association supports individualized correction programs which consider confinement as the least desired alternative consistent with public safety and the offender's needs. More community corrections, alternatives and resources, rather than an increase in the capacity and or the population in our prisons. The Association supports programs, facilities and services to treat and rehabilitate those incarcerated, looking forward toward their reintegration into society. **Ms. Waddell** read from the a fact sheet passed out of the Committee. **EXHIBIT(jus83a02)**

{Tape : 1; Side : A; Approx. Time Counter : 21.9 - 29.7}

Paul Whiting, Citizen, rose in support of the bill. He has discussed the women's prison issue with **REP. HURDLE** and an individual who has been in the prison, and it seems that from an economic point of view and a justice point of view, this resolution makes a lot of sense.

{Tape : 1; Side : A; Approx. Time Counter : 29.7 - 30.4}

Opponents' Testimony: None

Questions from Committee Members and Responses:

SEN. JABS asked how extensive this study will be. **REP. HURDLE** said that the purpose of this study is not just the issue of the women in prison. In a population as small as we have in the women's prison, we can approach a lot of different issues because the population is typical of the system. The real question is why the women's prison population is increasing so rapidly. The study will mostly be looking at policies.

{Tape : 1; Side : A; Approx. Time Counter : 30.4 - 34.4}

SEN. GROSFIELD asked how the classification system works in women prisons. **Diana Leibinger-Koch** said that women are classified according to a classification instrument that takes into consideration their dangerousness, the offence that they committed, their past history, their escape risk, and their need to be in a more or less secure setting. The women are classified in the regional prison with the same kind of classification instrument.

{Tape : 1; Side : A; Approx. Time Counter : 34.4 - 36.1}

SEN. GROSFIELD asked about the significant differences in the classification system for females as opposed to males. **REP. HURDLE** said that the classification system is the same for men and women.

{Tape : 1; Side : A; Approx. Time Counter : 36.1 - 36.9}

SEN. GROSFIELD asked how this bill would relate to **SEN. BARTLETT'S** sentencing study as it relates to all crimes and if there is a lot of overlap in the two. **SEN. BARTLETT** said that there are aspects of this study that dovetail from the sentencing study. The need for data between the Department of Justice, the Department of Corrections, the Supreme Court Administrators Office, the Statewide Judicial Automation Project, are going to capture the kind of information that is needed. In regard to the data bases and the sentencing, there is a sub-topic in each of them that would be whether or not there are variances between male offenders versus female offenders. This resolution goes beyond that and looks at the correctional impacts as it directly applies to women.

{Tape : 1; Side : A; Approx. Time Counter : 36.9 - 38.9}

SEN. GROSFIELD asked how many women are currently in the system in Montana. **REP. HURDLE** said that there are about 200 women in the system, but some of those are on probation, parole or in pre-releases. That number includes the approximated fifty-eight that are placed out-of-state.

{Tape : 1; Side : A; Approx. Time Counter : 38.9 - 40.3}

SEN. GROSFIELD asked how many women are in regional correctional facilities in Montana right now, and whether those facilities

were designed to segregate populations. **Director Day** said that there are no female inmates in the regional prisons at this point. For a short time there were some in the Cascade County facility involved with the laundry industry area. They were not designed to house female inmates and there is no further intention to house female inmates in those regional facilities.

{Tape : 1; Side : A; Approx. Time Counter : 40.3 - 41.1}

SEN. JABS asked if there are women in the boot camp. **Mr. Day** said that there are two female inmates in the boot camp and they are doing very well.

{Tape : 1; Side : A; Approx. Time Counter : 41.1 - 42.3}

Closing by Sponsor:

REP. HURDLE commented on the correlation with other studies that may or may not be approved. This is not an overlap with the sentencing study. The sentencing study is a very finite, focused study. There is a great need for data in other areas than just studying. This resolution is a way to look at the correctional system as a whole, through one prison.

{Tape : 1; Side : A; Approx. Time Counter : 42.3 - 43.9}

EXECUTIVE ACTION ON HJR 37

Motion: **SEN. BARTLETT** moved that **HJR 37 BE CONCURRED IN.**

Discussion:

SEN. GROSFIELD said that if we study women's issues within the prison system, we have to do that in the context to how men are treated to some extent. This resolution does not specifically state that, but maybe it should.

{Tape : 1; Side : B; Approx. Time Counter : 3.8 - 4.8}

SEN. GRIMES mentioned that the last whereas in the bill may contradict the previous ones in that it is not microcosm of the larger prison issues and should be studied in comparison to other prison systems.

{Tape : 1; Side : B; Approx. Time Counter : 4.8 - 5.5}

SEN. BARTLETT said that one of the things that this will do, is demonstrate the areas in which information is collected about the offenders for the kind of things that the legislature might like to look at in determining some potential causes in the explosion of the offender population. This study sets women up as the norm.

{Tape : 1; Side : B; Approx. Time Counter : 5.5 - 8.1}

SEN. GROSFIELD remarked if the timeliness is more or less for women than men, what does it tell us. How would the information be most useful?

{Tape : 1; Side : B; Approx. Time Counter : 8.1 - 9.3}

SEN. GRIMES said that if this is a legitimate study, there are going to be comparisons made with other women's systems in the country. It is assumed that this information will be used to compare with other states. This should not be viewed as a statistical sampling for the correctional system as a whole in Montana because that defeats the separateness in the individuality of the women's prison system.

{Tape : 1; Side : B; Approx. Time Counter : 9.3 - 10.9}

Vote: Motion carried 8-0.

EXECUTIVE ACTION ON HJR 38

Motion: **SEN. BARTLETT** moved that **HJR 38 BE CONCURRED IN.**

Discussion:

SEN. JABS asked why probation officers are being singled out to be studies and not others. He inquired if the legislature is going to have to investigate other salaries after this.

SEN. GROSFIELD said that it seems that juvenile probation officers are in a unique situation. He asked if this same problem is inherent in non-juvenile or adult probation officers.

Ms. Oitzinger said that adult probation officers are Corrections employees and are under the classification system. The only other employee in the county courthouse that is similarly situated, as an employee of the judge but having salaries impacted by County Commissioners, are Court Reporters.

{Tape : 1; Side : B; Approx. Time Counter : 10.9 - 13.2}

Vote: Motion carried 8-0.

ADJOURNMENT

Adjournment: 9:00 A.M.

SEN. LORENTS GROSFIELD, Chairman

Delila Croucher, Secretary

LG/DC

EXHIBIT (jus83aad)